

PROPOSED RULEMAKING

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 218 AND 240]

Radiological Health and Radon Certification Fees

The Environmental Quality Board (Board) proposes to amend Chapters 218 and 240 (relating to fees; and radon certification.) The amendments in Chapter 218 will increase the annual fees for registration of radiation-producing machines, radiation-producing machine service providers, accelerator licenses and radioactive material licenses as well as the hourly rate professional fee associated with certain full cost recovery licenses. The amendments in Chapter 240 will increase the application fees for certification of radon services.

This proposal was adopted by the Board at its meeting of December 18, 2007.

A. *Effective Date*

These proposed amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information contact Louis Ray Urciuolo, Chief, Division of Radiation Control, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 787-3720 or Richard Morrison, Assistant Counsel, Bureau of Regulatory Counsel (Bureau), P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) web site, www.depweb.state.pa.us.

C. *Statutory Authority*

These amendments are proposed under the authority of the following statutes:

Sections 301, 302 and 401 of the Radiation Protection Act (act) (35 P. S. §§ 7110.301, 7110.302 and 7110.401) direct the Department to develop and conduct comprehensive programs for the registration, licensing, control, management, regulation and inspection of radiation sources and radiation source users, collect fees adequate to recover program costs and delegate to the Board the power to adopt the regulations of the Department to implement the act.

Sections 4, 5 and 8 of the Radon Certification Act (63 P. S. §§ 2004, 2005 and 2008), which direct the Department to establish radon certification programs and to establish a fee schedule to cover the costs of the certification programs.

Section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which authorizes and directs the Board to adopt regulations necessary for the proper performance of the work of the Department.

D. *Background and Purpose*

The act requires that the fees be reviewed for adequacy every 3 years. The current fees in Chapter 218 were last revised in 2001 and the fees in Chapter 240 have not been revised since their inception in 1991, both despite a significant increase in personnel costs and the need to make a substantial investment in upgrading specialized technical equipment and program infrastructure. Programs can no longer be sustained at current levels as required. In addition, major program expansion is planned for April 1, 2008. At that time due to an upcoming agreement with the United States Nuclear Regulatory Commission (NRC), the radioactive material licensing and inspection program will expand by up to 25 people resulting in up to a tenfold increase in that component of the Radiation Protection Program's budget. The agreement is necessary as a result of the Energy Policy Act of 2005 and is mandated by the act. Otherwise, around August 2009 the Department would forfeit its regulatory authority to the NRC and lose its current program for licensing and inspecting the use of radioactive material.

Chapter 218. Radiological Health Fees

The programs funded through Chapter 218 permit fees include registration and inspection of X-ray facilities, licensing and inspection of accelerators, registration of radiation-producing machine service providers and licensing and inspection of radioactive material users. An important component to the fees in Chapter 218 is the professional hourly rate fee that supports required full cost recovery for unique services that cannot be standardized. Examples include the evaluation, inspection and licensing of very high-energy accelerators and decommissioning activities at contaminated sites.

There are approximately 11,000 permits issued for X-ray facilities, accelerators, radioactive material users and radiation-producing machine service providers, each with associated annual fees.

Chapter 240. Radon Certification Fees

Chapter 240 contains biennial application fees for the certification of radon services such as radon testing and mitigation. There are about 750 certified radon services that are subject to the certification fees and late penalties. The proposed permit fee increases are to ensure that the cost of permitting is borne by user fees rather than general fund moneys as much as possible without damaging the viability of this marginal industry. New penalties have also been proposed in Chapter 240 in the form of a "late fee" for anyone failing to submit a renewal application for certification of radon testing services at least 30 days prior to the expiration date or failing to provide the Department with a report of radon services or absence of activity within 90 days of the completion of the activity. If a firm wishes to have more than one certified radon tester, there is a new fee for certification of each additional employee. In addition, there is a new fee for each type of primary testing device the tester is certified to use. There is also a new fee for certification of radon courses used to satisfy educational requirements.

Proposed changes to the radiological fees regulations in Chapters 218 and 240 were reviewed by the Department's Radiation Protection Advisory Committee (Committee). The Committee represents various stakeholder interests and the general public. The proposed rule was presented

to the Committee and reviewed in detail at its meeting on August 21, 2007. The Committee submitted a letter, dated September 12, 2007, recommending the draft proposed regulations be forwarded to the Board.

The letter from the Committee also expressed two concerns. The Committee suggested that all fees be indexed to a measure of inflation, and that fees be phased in or scaled, or both, to the relative size of each radon business. The Bureau considered the concerns expressed by the Committee, but maintains that it is Department policy to adjust for inflation through a 3-year regulatory review process. Regarding the second concern, the Bureau notes that although the percentage increase in radon-related fees is large, the actual dollar amount of the increase is nominal. Therefore, a phased-in or scaled approach has been deemed unnecessary.

E. Summary of Regulatory Requirements

§ 218.11. Registration, Renewal of Registration and License Fees.

The annual registration fees in subsection (a) for radiation-producing machines, other than accelerators, have been increased by approximately 40% across the board. The same applies to accelerator license fees in subsection (d) and radiation-producing machine service provider registrations in subsection (h). The only exception is the supplemental hourly rate professional fee in subsection (d)(3) that increases from \$50 an hour to \$150 an hour. A major component of these increases are attributed to contractual obligations for salaries and benefits under collective bargaining since 2001 projected through 2010. Paragraph (1) is a requirement levied on the Department to assist the Board in the Board's obligation under the act to review and set sufficient fees every 3 years.

§ 218.11a. Special provisions for calculating fees during agreement state transition period.

This new section is needed to adjust annual fees for radioactive material licenses transferred from the NRC under agreement state during the first year to transition them from invoicing on the NRC's fiscal year schedule to a license anniversary schedule described in subsection (a). The Department will adjust the annual invoice to include the time from the effective date of the agreement to the anniversary month of the license issuance as indicated in subsection (b). Should the agreement state program become effective before this regulation takes effect, the transition fee will be collected retroactively under subsection (c).

Appendix A Fees for Radioactive Material Licenses.

Since agreement state will occur before or shortly after the final-form rule and Naturally Occurring and Accelerator-Produced Radioactive Material (NARM) is now considered byproduct material under the jurisdiction of the NRC by the Energy Policy Act of 2005, the NARM fee categories have been deleted. The fee category designations of the NRC have been adopted. Some additional common fee categories from the NRC's fee tables in 10 CFR Parts 170 and 171 have been added. The fees have in general been set equal to the NRC's fee for FY 2007. The formula in Footnote 3 for fee categories not listed has been changed to slightly more than 100% of the corresponding NRC fee because personnel will not be familiar with those categories and they will require extra effort in licensing and inspection. The professional fee component (hourly rate) identified by the asterisk is increased from \$50 per hour to \$150 per hour. This fee is substantially below the NRC's FY 2007 hourly rate of \$265 per hour.

§ 240.3. Definitions.

Definitions of "primary device" and "primary tester" have been added to support references in regulations such as the radon certification fee table.

§ 240.102. Prerequisites for radon testing certification.

Subsection (a)(3) clarifies that the Department will accept equivalent testing experience in lieu of 1 year professional experience toward individual tester certification. Subsection (b) clarifies that if a testing firm wishes to have more than one certified person, there will be a separate fee for each additional employee of the testing firm who is certified.

§ 240.103. Radon testing application contents.

The application contents reflects that the application fee has been moved to a new consolidated fee table.

§ 240.104. Application filing deadline.

This section imposes a new late application fee for radon testers who fail to reapply for certification at least 30 days prior to either the expiration of their certificate or the anticipated starting date of performing radon testing.

§ 240.113. Radon mitigation application contents.

Proposed changes reflect that the application fee has been moved to a new consolidated fee table.

§ 240.124. Application filing deadline.

This section imposes a new late application fee for radon laboratories who fail to reapply for certification at least 30 days prior to either the expiration of their certificate or the anticipated starting date of performing laboratory analysis.

§ 240.303. Reporting of information.

The amendments to subsection (a) expands upon the existing requirement that radon-related service providers furnish a report of activities to the Department within 45 days to also submit a report even if there is no activity for the time period. A new late reporting fee is also applied to any report subject to the 45-day reporting rule that is not submitted within 90 days of being due.

§ 240.306. Continuing education program.

Training and continuing education for radon-related services must be approved by the Department. A new course provider fee for persons providing these services is created within the Radon Certification Fee Schedule.

Radon Certification Fee Schedule. Fees have been consolidated into a single new table. Existing fees are increased by approximately 40–50%. The table also includes new penalty fees for late reporting of radon services data as well as late submission of renewal applications, a charge for certification of additional employees as testers under a firm and an additional charge for each type of primary testing device a tester is certified to use. Footnote 4 sets forth a task which the Department will perform, to assist the Board in the Board's obligation under the act to review and set sufficient fees every 3 years.

F. Benefits, Costs and Compliance

Benefits

Periodic adjustment of program fees is necessary to maintain a viable radiation protection program. The programs covered by these fees include oversight of accelerators, which are some of the most dangerous but also beneficial radiation-producing machines that the

general public encounters. There is an X-ray safety program that includes medical computed tomography which is the largest source of deliberate exposure to the general public. The radon program involves the largest controllable source of unnecessary exposure to the public. One of the benefits of supporting a radioactive material control program is to guard against the potential for wide spread contamination from the use of radioactive material. The benefit of radon's new late application and reporting penalty fees is to help ensure that anyone providing radon-related services is properly credentialed, and so the Department can maintain a comprehensive database of radon levels in this Commonwealth and follow up on the quality of the services and data. The new Radon Course Provider Fee, additional employee tester fee for firms and separate type primary testing device certification fees are to defray the additional effort the Department expends in certification.

Compliance Costs

The cost of compliance with the new fee regulation for radiation-producing machines has gone up about 40% in absolute dollars since the fees were last adjusted in 2001. The radon certification fees have increased by a similar amount for the same reasons. The extension of the requirement to report radon-related activities within 45 days, even during periods of no activity, is negligible since the reporting mechanism is already in place and no specific data needs to be assembled for periods of inactivity. The new late fees can be avoided simply by complying with the regulations for timely submittals. The new radon course certification fee could be recovered by the certificateholder through charges levied on individuals who use the course. With respect to the additional personnel certification fee for firms, it is not mandatory to have more than one certified tester in the firm or to utilize any primary testing devices. Radioactive material licensees will also pay more in absolute dollars.

Compliance Assistance Plan

The Department will put the regulated community on notice to expect higher fees so it will not come as a surprise, particularly the provision for the possible collection of retroactive transition fees for NRC licenses. However, the lead time may be short since much of the invoicing is done 60 days in advance. The reporting of radon data to the Department will be facilitated in the future by the development of a web-based reporting system.

Paperwork Requirements

There are no additional reporting forms as a result of fee increases. The null reporting requirement in writing for periods of no radon-related service activity can be accomplished through a letter or the service provider's normal report form. The Department is working on expanding the range of acceptable media that can be used for communications with the regulated community. This is expected to include a web-based reporting option. The requirement of reporting periods of no service activity and the submittal of radon course material for certification is viewed as a negligible burden.

G. Pollution Prevention (if applicable)

Any increase in fees has an indirect effect on pollution prevention. When potentially polluting activities have an associated user fee and are of marginal value, the impact of the fee may result in a decision to discontinue the activity if the benefit is not justified by the cost, thereby reducing the potential pollution. The proposed application of late fees to required radon data submittals helps to

ensure that the Department is made aware of the activities and can perform any necessary quality assurance checks on the activities. The certification of radon educational courses helps ensure the quality of radon services, the primary aim of which is to reduce exposure to radon in contained building structures.

H. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 4, 2008, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The regulatory review act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments. Interested persons are invited to submit comments, suggestions or objections regarding the proposed rulemaking to the Environmental Quality Board, P. O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 14, 2008. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by April 14, 2008. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final-form rulemaking will be considered.

Electronic Comments. Comments may be submitted electronically to the Board by completing and submitting the appropriate online form at www.depweb.state.pa.us/RegComments (select "Radiological Health and Radon Certification Fees (No. 7-423)" from the Proposed Rulemaking drop down box). Comments submitted electronically must be received by the Board by April 14, 2008. If an acknowledgement of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

KATHLEEN A. MCGINTY,
Chairperson

Fiscal Note: 7-423. No fiscal impact; (8) recommends adoption. Proposed rulemaking will have no net cost increase to the Commonwealth. State agencies that use licensed radioactive material or radiation-producing ma-

chines have paid license fees in the past and will be subject to the increased fees. Those costs are expected to be nominal.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart D. ENVIRONMENTAL HEALTH AND SAFETY
ARTICLE V. RADIOLOGICAL HEALTH
CHAPTER 218. FEES
PAYMENT OF FEES**

§ 218.11. Registration, renewal of registration and license fees.

(a) Annual registration fees for radiation-producing machines, other than accelerators, are the sum of an annual administrative fee and an annual fee for each X-ray tube or radiation generating device as follows:

<i>Type Facility</i>	<i>Annual Administrative Fee</i>	<i>Annual Fee per X-ray Tube or Radiation Generating Device</i>
Dentists, podiatrists, veterinarians	[\$ 70] \$100	[\$35] \$50
Hospitals	[\$520] \$725	[\$35] \$50
Other Facilities	[\$250] \$350	[\$35] \$50
	* * * * *	

(d) Particle accelerators are licensed under Chapter 228 (relating to radiation safety requirements for particle accelerators). Annual fees are as follows:

[(i)] (1) Accelerators, below 50 MeV, other than for ion implantation—[\$1,500] \$2,100 for the first accelerator at the facility plus [\$500] \$700 for each additional unit at that facility.

[(ii)] (2) Accelerators used for ion implantation—[\$500] \$700 plus [\$50] \$70 for each additional unit at the same facility.

[(iii)] (3) Accelerators [above] 50 MeV and above—full cost of staff time to review license applications and conduct inspections as needed. (Hourly rate is [\$50] \$150 per hour). For the purpose of anticipating costs and compliance with subsections (e) and (f), a minimum annual fee of [\$1,500] \$2,100 for the first accelerator at the facility plus [\$500] \$700 for each additional unit is established. Additional invoices will be issued by the Department at regular intervals at least quarterly when net costs are incurred above the minimum annual fee.

* * * * *

(h) A radiation-producing machine service provider shall pay an annual registration fee of [\$100] \$140.

(i) The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the EQB. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and must contain recommendations to in-

crease fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

§ 218.11a. Special provisions for calculating fees during agreement state transition period.

(a) The fees for the NRC licenses that are transferred to the Commonwealth on the date the Commonwealth becomes an agreement state will be invoiced on the license's next anniversary date.

(b) During the first year after the date the Department attains agreement state status, the annual fee for each NRC license transferred to the Commonwealth will include a proportional amount, based on the schedule of fees in Appendix A, for the period from the date agreement state status is attained until the license's next anniversary date, in addition to the amount assessed for the year following the license's anniversary date.

(c) In the event that the Commonwealth attains agreement state status prior to _____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal.*), the provisions of this section and § 218.11 and Appendix A (relating to registration, renewal of registration and fees; and fees for radioactive material licenses) will be applied retroactively to NRC licenses transferred to the Commonwealth.

APPENDIX A

Fees for Radioactive Material Licenses

<i>Fee Category^{5,6}</i>	<i>Description</i>	<i>Annual Fee (\$)^{1,2,3,4,7}</i>
1C	Special Nuclear Material Sealed Source Gauges (X-Ray Fluorescence)	[875] 2,100
1D	Special Nuclear Material—Other	[2,475] 5,800
2A(2)(c)	Source Material—metal extraction	90,200
2A5	Removal of Radioactive Contaminants from Drinking Water	11,200
2B	Source Material as Shielding	[450] 750
2C	Source Material—Other (not 11e2)	[8,650] 13,400
[3A1] 3A	Manufacturing & Distribution Commercial Broad Scope—10 CFR 30, 33	[19,875] 29,100
[3A2]	Manufacturing & Distribution Commercial Broad Scope—NARM Only	4,000]
[3B1] 3B	Manufacturing, Refurbishing & Distribution Commercial Specific License—10 CFR 30	[4,650] 8,300
[3B2]	Manufacturing & Distribution Commercial Specific License—NARM Only	2,000]

<i>Fee Category^{5,6}</i>	<i>Description</i>	<i>Annual Fee (\$)^{1,2,3,4,7}</i>	<i>Fee Category^{5,6}</i>	<i>Description</i>	<i>Annual Fee (\$)^{1,2,3,4,7}</i>
[3C1] 3C	Manufacturing & Distribution Pharmaceuticals—10 CFR 32.72—32.74	[11,650] 11,900	3R2	Greater than ten times the General License Limits in 10 CFR 31.12(a)(3), (4) or (5)	2,700
[3C2	Manufacturing & Distribution Pharmaceuticals—NARM Only	4,000]	3S	Manufacturing & Distribution Pharmaceuticals—Accelerator Produced Only	11,800
[3D1] 3D	Pharmaceuticals—Distribution Only—10 CFR 32.7x	[2,825] 6,800	4A	Waste Storage, Processing or Disposal	Full Cost *
[3D2	Pharmaceuticals—Distribution Only—NARM Only	2,000]	4B	Waste Packaging or Repackaging	[8,175] 12,000
3E	Irradiator—Shielded Source	[2,575] 4,200	4C	Waste Receipt of Prepackaged for Disposal	[6,125] 9,200
3F	Irradiator—Unshielded < 10kCi	[4,300] 7,800	5A	Well Logging & Non Field Flood Tracers	[7,500] 4,400
3G	Irradiator—Unshielded >= 10kCi	[10,750] 31,200	5B	Well Logging Field Flood Tracer Studies	Full Cost *
3I	Distribution As Exempt—No Review of Device	[3,525] 10,700	6A	Nuclear Laundry	[14,250] 28,800
3J	Distribution—SSD Devices to Part 31 GLs	[1,550] 2,500	7A	Human Use—Teletherapy	[11,275] 13,700
3K	Distribution—No Review-Exempt Sealed Source	[1,300] 1,900	[7B1] 7B	Human Use—Broad Scope (except Teletherapy)	[19,975] 29,000
[3L1] 3L	Research & Development Broad Scope	[8,300] 15,100	[7B2	Human Use—Broad Scope (except Teletherapy)—NARM Only	2,000]
[3L2	Research & Development Broad Scope—NARM Only	2,000]	[7C1] 7C	Human Use—Specific License (except Teletherapy)	[4,300] 4,900
[3M1] 3M	Research & Development	[3,650] 5,600	[7C2	Human Use—Specific License (except Teletherapy)—NARM Only	750]
[3M2	Research & Development—NARM Only	750]	[8A1] 8A	Specifically licensed sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	[875] 2,100
3N	Services other than Leak Testing, Waste Disposal or Calibration	[3,875] 8,500			
3O	Radiography	[10,850] 14,100			
[3P1] 3P	Other Byproduct Material	[1,900] 2,700	[8A2	Specifically licensed NARM sources used in static eliminators, nonexempt smoke detectors, fixed gauges, dew pointers, calibration sources, civil defense uses or in temporary (2 years or less) storage	200]
[3P2	NARM Licenses not covered elsewhere	750]			
3Q	Generally licensed devices under § 217.143 (relating to certain measuring, gauging or controlling devices)	[315] 320			
3R1	Greater than the General License Limits in 10 CFR 31.12(a)(3), (4) or (5) but not more than ten times those Limits	2,100	14	Decontamination, Decommissioning, Reclamation or Site Restoration	Full Cost *

<i>Fee Category</i> ^{5,6}	<i>Description</i>	<i>Annual Fee (\$)</i> ^{1,2,3,4,7}
[16A] 16	Reciprocity (180 days/year)	[900] 1,500
[16B]	Reciprocity—NARM (180 days/year)	300]
SB1 ₅	Small Business—Category 1	[2,100] 2,300
SB2 ₆	Small Business—Category 2	[400] 500

¹ A license may include as many as four noncontiguous sites at the base fee. Sites that are within 5 miles of the main [**Radiation Safety Office**] radiation safety office where the license records are kept will be considered contiguous. An additional fee of 25% of the base fee will be added for each noncontiguous site above four.

² All fees [**for NARM licenses**] will be effective upon publication of the final rules in the *Pennsylvania Bulletin*. [**The fees for NRC licenses that are transferred to the Commonwealth will be effective on the next license anniversary date.**] Existing NARM licenses will be changed to the corresponding category of byproduct material license [**on the next license anniversary date after achievement of Agreement State status and fees adjusted at that time. The NARM license categories will cease to exist one year after Agreement State status is achieved**] in Appendix A upon publication of the final rule.

³ Annual fees for categories of NRC licenses that are not included in this table will be calculated as follows: PA Fee = [**0.7**] (NRC Annual Fee + 0.10 NRC Application or Renewal fee).

⁴ Annual fees charged to holders of transferred NRC licenses with multiple sites will not exceed the fees charged by the NRC for the same licenses **that are in effect** in the year of transfer, provided the number of noncontiguous sites [**remains constant**] **does not increase**.

⁵ Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Manufacturing Entities that have an average of 35—500 employees with Gross Annual Receipts of more than \$350,000 and less than \$5 million; Small Government Jurisdictions (including publicly supported, nonmedical educational institutions) with a population between 20,000 and 50,000; and nonmedical Educational Institutions that are not state or publicly supported and have 35—500 employees.

⁶ Small Businesses Not Engaged in Manufacturing, and Small Not-For-Profit Organizations with Gross Annual Receipts of less than \$350,000; Manufacturing Entities that have an average of less than 35 employees and less than \$350,000 in Gross Annual Receipts; Small Government Jurisdictions (including publicly supported non-medical educational institutions) with a population less than 20,000; and nonmedical Educational Institutions that are not state or publicly supported and have less than 35 employees.

⁷ Full cost recovery licensees and licensees required to provide financial assurance for decommissioning are not eligible for reduced fees under category SB1 or SB2.

* Full cost recovery consists of a professional fee, to cover the activities and support of Department personnel,

and any other additional incidental charges incurred, such as related contracted services or laboratory costs. The professional fee component (Hourly Rate) is [**\$50**] **\$150** per hour. Other costs are recovered at 100% of actual cost. Invoices shall be issued by the Department at regular intervals but at least quarterly when net costs are incurred.

CHAPTER 240. RADON CERTIFICATION

Subchapter A. GENERAL PROVISIONS

GENERAL

§ 240.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Primary device—Continuous monitors or electrets, or both, read or analyzed, or both, by a primary tester.

Primary tester—A tester who reads or analyzes, or both, the continuous monitors or electrets, or both, that the tester places or retrieves, or both.

* * * * *

Subchapter B. CERTIFICATION

CERTIFICATION FOR RADON TESTING

§ 240.102. Prerequisites for radon testing certification.

(a) *Individual certification for radon testing.* An individual will not be certified to test unless the individual has done the following:

* * * * *

(3) Had 1 year of professional experience in performing radon measurements **or equivalent as determined by the Department.**

* * * * *

(b) *Firm certification for radon testing.* If the applicant for testing certification is a firm, it shall employ at least one individual who is certified to test and who is in responsible charge of the firm's testing activities. If the firm loses its certified individual, the certification automatically lapses and is void until the firm has notified the Department of employment of another certified individual. Within 5 days' the firm shall notify the Department in writing when it loses its certified individual. **Each testing firm employee, after the first initial testing firm employee, will be charged a fee as set forth in Appendix A (relating to radon certification fee schedule).**

* * * * *

§ 240.103. Radon testing application contents.

An application for radon testing certification, by both individual and firm, shall be submitted to the Department in writing on forms provided by the Department and [**shall**] **must** contain:

* * * * *

(2) A nonrefundable fee [**of \$200 for individuals, \$500 for firms**] **as set forth in Appendix A (relating to radon certification fee schedule).**

§ 240.104. Application filing deadline.

A person who expects to conduct radon testing shall file a complete application for certification a minimum of 30 days prior to the anticipated starting date of testing activity **and any application postmarked after the certification expiration date will be charged a late application fee as set forth in Appendix A (relating to radon certification fee schedule).**

CERTIFICATION FOR RADON MITIGATION

§ 240.113. Radon mitigation application contents.

An application for radon mitigation certification, by both individual and firm, shall be submitted to the Department in writing on forms provided by the Department and **[shall] must** contain:

* * * * *

(2) A nonrefundable fee **[of \$200 for individuals, \$500 for firms] as set forth in Appendix A (relating to radon certification fee schedule).**

* * * * *

CERTIFICATION FOR RADON LABORATORY

§ 240.124. Application filing deadline.

A person who anticipates performing laboratory analysis of samples to determine radon concentrations shall file a complete application for laboratory analysis certification a minimum of 30 days prior to the anticipated starting date of laboratory analysis **and any application postmarked after the certification expiration date will be charged a late application fee as set forth in Appendix A (relating to radon certification fee schedule).**

Subchapter D. OPERATION REQUIREMENTS

§ 240.303. Reporting of information.

(a) Within 45 days after testing, mitigation or other radon-related service is provided, the person providing the service shall submit to the Department in a format approved by the Department the results of testing, including screening measurements, follow-up measurements, premitigation measurements, postmitigation measurements and the method used to mitigate against radon contamination. **If no testing, mitigation or radon-related service has been provided during this 45-day period that person shall inform the Department of same in writing. Anyone required to provide this 45-day reporting who does not report within 90 days of the completion of the activity will be subject to the Late 45-Day Reporting Fee as set forth in Appendix A (relating to radon certification fee schedule).** At a minimum, these results will be retained for 2 years. The information **[shall] must** include:

* * * * *

§ 240.306. Continuing education program.

A person conducting radon-related activities shall have a radon education program to assure that the applicant

and all employees have a minimum of 4 hours initial training, and the certified person shall participate in a continuing education program consisting of a minimum of 8 hours of Department-approved courses or seminars on radon testing or mitigation each year. **Course providers are required to submit course information as requested by the Department and the Course Provider Fee as set forth in Appendix A (relating to radon certification fee schedule) prior to Department approval of any course.**

(Editor's Note: The following table is new and printed in regular text to enhance readability.)

APPENDIX A

Radon Certification Fee Schedule

Testing Individual	\$350 every 2 years
Testing Employee	\$100 every 2 years
Testing Firm	\$700 every 2 years
Mitigation Individual	\$300 every 2 years
Mitigation Firm	\$700 every 2 years
Laboratory Individual	\$400 every 2 years
Laboratory Firm	\$750 every 2 years
Primary Testing Device Listing	\$100 every 2 years (1)
Course Provider	\$375 every 2 years (2)
Late Application Renewal	\$100
Late 45-Day Reporting	\$100 (3)

The Department will review the adequacy of the fees established in this schedule at least once every 3 years and provide a written report to the EQB. The report must identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and must contain recommendations to increase fees to eliminate the disparity, including recommendations for regulatory amendments to increase program fees.

(1) Primary radon testers shall submit the Primary Testing Device Fee as specified in the Radon Certification Fee Schedule for each device they read or analyze, or both.

(2) A person approved by the Department to provide initial or continuing, or both, education courses shall submit the Course Provider Fee as specified in this appendix.

(3) Anyone not submitting the required 45-day testing or mitigation, or both, reporting within 90 days of the completion of the testing or mitigation, or both, activity (or if no activities have been performed during this period of informing the Department of same in writing) will be subject to the Late 45-Day Reporting Fee as specified in this appendix.

[Pa.B. Doc. No. 08-445. Filed for public inspection March 14, 2008, 9:00 a.m.]

LOBBYING DISCLOSURE REGULATIONS COMMITTEE

[51 PA. CODE CHS. 31, 33, 35, 37, 39, 41, 43, 45,
51, 53, 55, 57, 59 AND 65]

Lobbying Disclosure

The Lobbying Disclosure Regulations Committee (Committee) published a proposed rulemaking at 38 Pa.B. 435, 445—466 on January 19, 2008. On page 444 of the Preamble to the proposed rulemaking, an inadvertent typographical error appeared in the first sentence of the Regulatory Review Act Requirements stating that the Committee submitted a copy of the proposed rulemaking and the Regulatory Analysis Form to Chairpersons of the House State Government Committee on January 9, 2008. In fact, on January 9, 2008, the Committee submitted a copy of the proposed rulemaking and the Regulatory Analysis Form to the Chairpersons of the House Judiciary Committee (the appropriately designated committee). The documents were also submitted to the Independent Regulatory Review Commission and the Chairpersons of the Senate State Government Committee as noted in the January 19, 2008, publication.

ROBERT A. MULLE,
Chairperson

[Pa.B. Doc. No. 08-446. Filed for public inspection March 14, 2008, 9:00 a.m.]